



POLICE DEPARTMENT CITY OF NEW YORK

March 21, 2017

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Christopher Daly
Tax Registry No. 922204
Joint Bank Robbery Task Force
Disciplinary Case No. 2016-15279

Charges and Specifications:

1. Sergeant Christopher Daly, on or about April 9, 2015, at approximately 1319, while assigned to the Warrants Section and on duty, in the vicinity of [REDACTED] New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he entered [REDACTED] without sufficient legal authority.
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT
2. Sergeant Christopher Daly, on or about April 9, 2015, at approximately 1319, while assigned to the Warrants Section and on duty, in the vicinity of [REDACTED] 11C, New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he searched [REDACTED] without sufficient legal authority.
P.G. 203-10 Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT
3. Sergeant Christopher Daly, on or about April 9, 2015, at approximately 1319, while assigned to the Warrants Section and on duty, in the vicinity of [REDACTED] New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he threatened to arrest Person A without sufficient legal authority.
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT PROHIBITED CONDUCT
4. Sergeant Christopher Daly, on or about April 9, 2015, at approximately 1319, while assigned to the Warrants Section and on duty, in the vicinity of [REDACTED] New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he failed to show an arrest warrant to Person A without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED
CONDUCT

Appearances:

For CCRB-APU: Hamilton Lee, Esq. & Raasheja Page, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For the Respondent: Matthew Shieffer, Esq.
The Quinn Law Firm
Crosswest Office Center
399 Knollwood Road – Suite 220
White Plains, NY 10603

Hearing Date:

February 16, 2017

Decision:

Guilty of Specifications 1, 2, and 3. Not Guilty of Specification 4.

Trial Commissioner:

ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 16, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB introduced the transcript of an interview with Person A as well as two videotapes of a portion of the incident. Respondent called Captain Christopher Flanagan as a witness and Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of Specifications 1, 2 and 3, and Not Guilty of Specification 4 of the charged misconduct.

FINDINGS AND ANALYSIS

It is undisputed that on April 9, 2015, at approximately 1319 hours, Respondent was on duty and assigned to the Manhattan Warrants Squad. Respondent arrived at [REDACTED] at approximately 1130 hours. (Tr. 43) He was at the building, "looking for a gentleman that had assaulted a police officer" earlier that day. (Tr. 32) Respondent did not have a warrant for this individual. Approximately two hours after arriving at [REDACTED], Respondent knocked on the door of [REDACTED] (Tr. 44) Inside [REDACTED] at the time, were Person A and her two daughters, aged 13 and 15. (CCRB Ex. 2B, 6) Respondent had a conversation with Person A through her closed door. Person A called 911 and reported that police officers in plain clothes were at her door telling her to open the door or they would take her door down. She stated that she saw no warrants. (CCRB Ex. 1, 3) After uniformed officers arrived in the hallway, Person A partially opened her door. Respondent put his foot into the doorway. Person A asked where Respondent's warrant was. Respondent stated he

didn't need one because he was trying to catch a fleeing felon. (CCRB Ex. 4 at approximately 0:22-0:33 seconds) Respondent then showed Person A a picture of the man he believed had assaulted the officer earlier in the day. (CCRB Ex. 4 at approximately 0:43-0:45 seconds; Tr. 46-47) As acknowledged by Respondent, Person A never consented to his entry into the apartment. (Tr. 42) Respondent entered and searched the apartment. (Tr. 36-37) While he was inside the apartment, Respondent told Person A that if she continued to interfere with the search she would be arrested. (Tr. 48-49)

At trial, the defense conceded that exigent circumstances did not apply in this case as a justification for Respondent's entry into the apartment. (Tr. 57, 61) Instead, the defense argued that Respondent was justified in entering the apartment under two theories: 1) because he was acting on the order of Captain Flanagan; and/or, 2) he had knowledge that there were active warrants for someone who was at the location. I find that Respondent was not justified in entering under either theory.

With regard to Respondent's defense that he was acting on an order from Captain Flanagan, without reaching any determination as to whether or not this would constitute sufficient justification, I find that there is not sufficient credible evidence that Respondent was in fact acting upon such an order. In response to the initial question asked about who he ordered to enter [REDACTED] Captain Flanagan testified at trial that he ordered Lieutenant Hawthorne to make entry into [REDACTED]. Defense counsel then followed up by asking Captain Flanagan if there were any other members of the service in the area when he made that order. He responded at that point by testifying that the individuals from Manhattan North Warrants were also in the hallway with him. As a second follow-up by defense counsel, Captain Flanagan was asked the leading question of whether Respondent was present when he made that order. In

response to the leading question, Captain Flanagan answered yes. (Tr. 20-21) On cross-examination, counsel for CCRB brought out the fact that at his CCRB interview, Captain Flanagan stated that he was not familiar with Respondent. (Tr. 22) On redirect, Captain Flanagan testified he knew Respondent by sight but didn't know his name on April 9, 2015. (Tr. 29) Captain Flanagan's less than conclusive testimony concerning any order directed specifically to Respondent is further undermined by testimony from Respondent himself. Respondent testified that he had a discussion with the Lieutenant and the Captain in the hallway and, "It was indicated – I don't want to say that Captain Flanagan said I order you to do it, but it was implied, to me at least." Respondent believed he had an order to enter the apartment because, "nobody told me not to, to stop." (Tr. 36) This testimony indicates that in fact no order had been given directly from Captain Flanagan to Respondent to enter the apartment.

With regard to the defense that Respondent entered the apartment because there were active warrants for someone inside the apartment, there were three open warrants admitted into evidence for a male named Person B. (CCRB Ex. 5) Each of these warrants listed a different address for Person B. None of these addresses were [REDACTED]. (CCRB Ex. 5) Respondent testified at trial that he was at [REDACTED] looking for the person who assaulted the police officer and because he had warrants for the location of [REDACTED] (Tr. 33) Respondent, however, did not have physical possession of any warrants and testified that the information that there were active warrants at the location was relayed to him by some other officers. (Tr. 34, 54-55) Respondent also testified that he did not have any name for the person on the warrants. (Tr. 54-55) The court finds this explanation troubling on its face. Respondent, as a member of the warrant squad, asks the court to believe that he was going into the apartment in reliance on active warrants when the addresses on the warrants did not match the apartment's

address. More significantly, at the time Respondent entered, he did not even know the name of the person who had active warrants. He would not have even known who he was going to arrest on the active warrants. What seems more likely to the court is that the entry to the apartment on the active warrant theory was developed after it was determined that the entry based on hot pursuit was not justified. It is clear from Respondent's actual words, as heard on the video, that he was going into the apartment based on the sole reason that he was looking for the person who had assaulted another officer earlier in the day. Even when Person A is demanding to know if Respondent has a warrant, he never mentions anything about any active warrants to Person A. In fact he specifically tells her he doesn't need a warrant because he is looking for the fleeing felon. He reinforces that this is who he is looking for by showing her the picture of the person identified as the person who assaulted the officer. In conclusion, I find that Respondent entered the apartment in an attempt to search for the person who had assaulted the officer. As he was not in hot pursuit, had no warrant for this person, and had no consent to enter the apartment, there was no sufficient legal authority for either the entry into or the search of the apartment and Respondent is guilty of Specifications 1 and 2.

As the entry and search were not justified, Respondent's statement to Person A that she would be arrested if she interfered, was also without sufficient legal authority. Respondent should not have been in the apartment and therefore Person A was not interfering in a justified police action. Respondent therefore is guilty of Specification 3.

With regard to Specification 4, I do not find that there was any obligation on the part of Respondent to show Person A an arrest warrant. The section of the Patrol Guide cited to by CCRB as the rule underlying this specification -Section 208-42, (Tr. 68) simply states that an officer, when arresting a person for whom a warrant has been issued must: "1. Inform defendant

of warrant and offense charged unless physical resistance, flight or other factors make such procedure impractical. 2. Present warrant, if requested, or as soon as possible, if not possessed at time of arrest.” This Patrol Guide procedure is not applicable to the facts of this case. First of all, Respondent was not arresting Person A on a warrant and this section of the Patrol Guide addresses an officer’s responsibility to inform a defendant of the warrant pertaining to that defendant. In addition this Patrol Guide section, when it does apply to an arrest of a defendant on a warrant situation, simply indicates that the warrant must be presented to the defendant as soon as possible. I find Respondent not guilty of Specification 4.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent’s service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on August 31, 1998. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. CCRB asked for a penalty for all four specifications of a loss of 30 vacation days and one year dismissal probation.

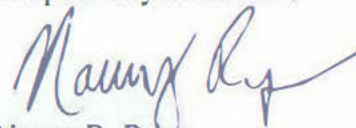
In other recent cases where Respondents unlawfully entered and searched residences the penalties were as follows: A ten-year detective (Respondent 1), seven-year detective (Respondent 2), and eighteen-year sergeant (Respondent 3) forfeited 8 vacation days each for (i) entering a residence without sufficient legal authority, and (ii) searching said residence without sufficient legal authority. Disciplinary Case Nos. 2014-12486, 2014-12484 & 2014-12485, (September 16, 2016); A twenty-year sergeant with no prior formal disciplinary history negotiated with CCRB a penalty of ten vacation days for (i) searching an apartment without sufficient legal authority, (ii) entering an apartment without sufficient legal authority, (iii)

damaging the balcony door of an apartment without sufficient legal authority, (iv) refusing to provide his shield number to an individual, (v) wrongfully using force against an individual, and (vi) speaking discourteously to an individual in that he stated, "I am the fucking police."

Disciplinary Case No. 2016-15036 (June 1, 2016); A five-year police officer (Respondent 1) forfeited 3 vacation days for entering a residence without sufficient legal authority. Nine-year police officer (Respondent 2) forfeited 3 vacation days for searching the residence without sufficient legal authority. Nine-year sergeant (Respondent 3) forfeited 5 vacation days for entering the residence without sufficient legal authority. Disciplinary Case Nos. 2014-12260, 2014-12259 & 2014-12261 (May 24, 2016); An eight-year police officer forfeited three vacation days for entering a suspect's apartment without sufficient legal authority. Disciplinary Case No. 2014-12027 (April 7, 2016); A fifteen-year captain forfeited seven vacation days for entering an apartment without sufficient legal authority. Disciplinary Case No. 2014-11567 (February 29, 2016).

The CCRB recommended penalty seems excessive in light of other penalties in similar unlawful entry and search cases, Respondent's recent performance evaluations, and lack of prior disciplinary adjudications over his eighteen year history with the Department. In addition, Respondent in this case was found guilty of only three of the four Specifications. However, as a supervisor in a warrants squad, Respondent should have demonstrated a more comprehensive understanding of the law concerning the entry of premises. I therefore recommend a penalty of the loss of eight vacations days.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

AUG 03 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT CHRISTOPHER DALY
TAX REGISTRY NO. 922204
DISCIPLINARY CASE NO. 2016-15279

Respondent was appointed to the Department on August 31, 1998. His last three annual performance evaluations were as follows: he received an overall rating of 5.0 "Extremely Competent" for 2015 and an overall rating of 4.5 "Extremely Competent/Highly Competent" for both 2014 and 2013. He has been awarded 30 medals for Excellent Police Duty and 5 medals for Meritorious Police Duty. [REDACTED]

He has no prior disciplinary history.

Nancy R. Ryan
Assistant Deputy Commissioner Trials